

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

In re I.J., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

I.J.,

Defendant and Appellant.

A154641

(Contra Costa County
Super. Ct. No. J18-00249)

I.J., three months shy of 17 years of age at the time of his current offenses, appeals from a dispositional order committing him to the Department of Corrections and Rehabilitation, Division of Juvenile Justice (DJJ).¹ He contends that the commitment and rejection of a less restrictive placement are not supported by substantial evidence. We disagree and shall affirm the juvenile court's order.

¹ Effective July 1, 2005, the correctional agency formerly known as the California Youth Authority became known as the Department of Corrections and Rehabilitation, Division of Juvenile Facilities. (Welf. & Inst. Code, § 1710, subd. (a); Pen. Code, § 6001.) The Division of Juvenile Facilities is a subdivision within the Department of Corrections and Rehabilitation Division of Juvenile Justice. (Gov. Code, § 12838, subd. (a).) References to the Department of the Youth Authority in statutes such as Welfare and Institutions Code section 734 are deemed to refer to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities. (Welf. & Inst. Code, § 1710, subd. (a).) The parties to this appeal refer to the authority to which I.J. was committed as the Division of Juvenile Justice, or DJJ. We will do likewise.

Background

Following a jurisdictional hearing under Welfare and Institutions Code section 602, the juvenile court sustained a petition charging I.J. with two counts of residential robbery (Pen. Code, §§ 211, 212.5, subd (a)), committed in concert with others (Pen. Code, § 213, subd. (a)(1)(A)) and with the personal use of a firearm (Pen. Code, § 12022.53, subd.(b)).² In short, the evidence showed that at about 6:45 p.m. on February 24, 2018, I.J. and two other teenagers entered the victims' garage and at gunpoint took wallets with cash from the two victims.³ The probation department report (prepared by the Solano County Probation Department) recommended that I.J. be committed to the DJJ. The Contra Costa County Probation Department reported that I.J. had been screened for the less restrictive Youthful Offender Treatment Program (YOTP) and, considering "the minor's level of remorse," had been determined to be an acceptable candidate for that program, but noted that the Solano County department "carefully considered all of the dispositional outcomes, including the YOTP, and determined a commitment to the Division of Juvenile Justice would best serve the minor and the community."

At the dispositional hearing, the assistant district attorney candidly recognized this to be "somewhat of a close case." On one hand, in 2016 I.J. had been adjudged a ward of the court based on an assault with force likely to produce great bodily injury. He had successfully completed a nine-month program at the Orin Allen Youth Rehabilitation Facility (OAYRF). His probation had been satisfactorily terminated only nine months before he participated in what the court regarded as a "serious . . . offense committed in a very brazen way, on top of a young person who had already committed a 707(b) offense not that long before this And his criminal behavior, the showing of lack of regard for

² Allegations of additional residential robberies were dismissed.

³ According to the probation report, I.J. asserted that although present, he was not armed and was not the minor who placed a gun to the head of one of the victims. At trial, that victim testified that another minor held the gun to his head, but the second victim thought it was I.J.

other people, has now escalated to the point of arming and overcoming completely innocent victims in a garage.”

On the other hand, I.J. had not been a disciplinary problem at home or at school. For a time following his release from OAYRF he had lived with his uncle in San Francisco, stayed out of trouble, and received good grades. When he returned to his home in Richmond he associated with other minors who apparently were a negative influence and initiated the current offenses, for which he “expressed what appeared to be genuine remorse.” While being detained at juvenile hall following his arrest, he met weekly with a psychologist with whom he had developed a trusting relationship. I.J. wished to maintain that relationship, which was possible if he was placed in a local program such as the YOTP, but not if committed to the DJJ.

The court considered that “many of the programs offered through YOTP are very similar, if not the same, as those offered through the [OAYRF], and [I.J.] had those opportunities when he was at [OAYRF] for many of those programs.” The court concluded, “It would make little sense to commit him to YOTP, say for a period of 18 months or something other than the regular term because he would just be sitting in juvenile hall; whereas, DJJ, there’s just a full plethora of programs that he can participate in, including much more availability to vocational training and opportunities. They also have what we have, gang diversion and gang awareness programs”⁴ Hence, the court committed I.J. to DJJ for the maximum term of 24 years and four months.

⁴ Earlier, the court also observed, “So when you have to balance his needs with protecting the community, and by community, I think I also have to consider the programs where he might be placed, I don’t believe YOTP seems very appropriate, number one. [¶] His involvement in this, the level of sophistication, the level of violence used. There is reference in this report about his Swerve gang membership and his associations with other young people that clearly are caught up in this kind of behavior, to put him in YOTP with a group of young people who are not nearly as sophisticated, who have not committed nearly as violent or serious offenses, I think is problematic. The program is not long enough. I think he would pose a risk to the other young people in that program, and I just don’t think it would meet his needs.”

Discussion

Welfare and Institutions Code section 734 provides that “[n]o ward of the juvenile court shall be committed to [DJJ] unless the judge of the court is fully satisfied that the mental and physical qualifications of the ward are such as to render it probable that he will be benefitted by the reformatory educational discipline or other treatment provided by the [DJJ].” In *In re Carlos J.* (2018) 22 Cal.App.5th 1, 10, on which I.J. places heavy reliance, it was held that “In order for a juvenile court to make the determination of ‘appropriate’ treatment in a minor’s ‘best interest’ required by [Welfare and Institutions Code] section 202, subdivision (b), and the determination of whether the [DJJ] is ‘best suited’ to meet a minor’s ‘special needs and best interest’ required by [California Rules of Court,] rule 5.790(h), there must be *some* specific evidence in the record of the programs at the [DJJ] expected to benefit the minor.” I.J. contends that the record here lacks such evidence.

The record in the present case is very different from the record before the court in *Carlos J.* That case involved a 15-year-old minor who “did not have a substantial record of involvement in the juvenile court system.” (*In re Carlos J., supra*, 22 Cal.App.5th at p. 7.) A psychologist reported that Carlos was suffering from “ ‘what appears to be symptoms of Acute Trauma Reaction’ ” based on a prior severe traumatic incident, and that he needed a program “ ‘to meet his dual needs of addressing his trauma condition and developing . . . pro-social life skills.’ ” (*Id.* at p. 8.) The Court of Appeal observed that “[g]iven the consensus that [Carlos] has serious mental health needs, the availability of appropriate treatment at the [DJJ] was at least a necessary piece of information for the juvenile court to consider in determining probable benefit” (*id.* at p. 11), and the probation department report did not identify any such program at DJJ likely to benefit the minor. Although the matter was remanded for a further hearing, the court pointed out that “the probation department is not required in its report and initial testimony to provide in depth information about the [DJJ’s] programs.” (*Id.* at p. 13.)

Here, the record reflects that I.J. was previously a ward of the juvenile court placed in a less restrictive program for the commission of a serious felony. There is no

suggestion that he suffers from a mental health issue such as did Carlos J. or that he has any such special needs. The probation report indicates that a risk-and-needs assessment was performed and I.J. was assessed as a “HIGH risk to reoffend” and not “having any Low risk/need factors.” “Based on the serious nature of [I.J.’s] offense,” the report states, the probation officer “screened the minor’s case with DJJ staff. He was found to be appropriate and qualified for DJJ due to sustained felonies of 211/212.5 PC.” The Solano County placement committee “determined DJJ to be appropriate on the basis of the egregious nature of the offense, the escalation in criminal behavior despite the minor’s successful completion of OAYRF and wardship, lack of participation in services while in custody, and the minor’s age.”

More specifically, the report identified under the heading “Case Needs” the following programs at DJJ responsive to I.J.’s needs: “Through the use of the Integrated Behavior Treatment Model . . . , the minor will be better assessed for appropriate intervention services available to treat his present needs of education, attitude and thinking, mental and physical health, family support, peer influences, substance abuse, and violence/aggression. Intervention services at DJJ are inclusive but not limited to Aggression Interruption Training, Counterpoint to address anti-social attitudes and peers, Interactive Journaling and other Cognitive Behavioral Models. Reentry programming would be available to assist the minor with expressed goals when returning to the community.”

The report before the court also reflects that the placement committee “gave consideration to other secure placement options. Lower levels of placement services such as the [YOTP] or group home placement were discussed; however, the minor was not found appropriate. While the minor would be able to duplicate services in YOTP that he already received during his time at OAYRF, the minor’s high risk behavior warrants the highest level of services available.”

“A DJJ commitment is not an abuse of discretion where the evidence demonstrates a probable benefit to the minor from the commitment and less restrictive alternatives would be ineffective or inappropriate.” (*In re M.S.* (2009) 174 Cal.App.4th 1241, 1250.)

The record in the present case satisfies these requirements despite the inclusion of other evidence that might have justified a different disposition. The juvenile court did not abuse its discretion in committing I.J. to the DJJ.

Disposition

The dispositional order is affirmed.

POLLAK, P. J.

WE CONCUR:

TUCHER, J.

BROWN, J.